

**STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE**

David Moore,)	DOCKET NO. 2005-01
)	
Petitioner,)	
)	
v.)	ORDER
)	
South Carolina Department of Insurance,)	
)	
Respondent.)	
_____)	

This matter is before me on remand from the South Carolina Administrative Law Court. For the reasons that follow, I deny the petition and affirm the denial of David Moore's application to sponsor, instruct, and/or proctor continuing education courses.

PROCEDURAL BACKGROUND

This case arises from the final decision of the South Carolina Department of Insurance, on December 23, 2003, denying the application of petitioner David Moore for authority to act as a proctor and sponsor of continuing insurance education courses. Mr. Moore filed a notice of appeal with the South Carolina Administrative Law Court (then the Administrative Law Judge Division). That court, citing S.C. Code Ann. § 38-3-210, remanded the case to the Department of Insurance, ruling that the SCALC sits as an appellate tribunal in cases such as this one, and does not act as the trier of fact.¹ (Pet'r Ex. 5 at 2.)

¹ I note that application of Section 38-3-210 in the manner that the Administrative Law Court applied it would negate the purpose of that court in hearing contested cases as the trier of fact pursuant to the Administrative Procedures Act, S.C. Code Ann. §§ 1-23-310 through -400, and would require the Department to conduct potentially hundreds of evidentiary hearings annually. The Administrative Law Court routinely hears, as the trier of fact, contested cases involving actions of the Department of Insurance.

I appointed Jeffrey A. Jacobs as hearing officer for this case. Mr. Jacobs conducted an evidentiary hearing on October 28, 2005. Harry DePew represented Mr. Moore; David Belton represented the Department of Insurance. At the conclusion of the hearing, Mr. Jacobs informed the attorneys that, upon receipt of the transcript, I would notify them of the deadline for submission of post-hearing briefs. On December 12, 2005, Mr. Jacobs notified counsel that they should submit their briefs by December 21, 2005. After several extensions, the Department submitted its brief on January 20, 2006. Despite requesting several extensions, Mr. DePew has not submitted a brief.

Mr. Jacobs has certified the record in this case to me, and has submitted findings of fact, conclusions of law, and recommendations. I adopt those findings of fact and conclusions of law.

FINDINGS OF FACT

Petitioner David Moore is a licensed insurance producer. (Tr. at 18.) Moore believed he was authorized by the state of South Carolina to conduct insurance continuing education (CE) courses. (Tr. at 18.) Moore testified that he had a contract with Pictorial, a company that supplied CE courses, which he first signed in 1991. He testified that the contract allowed him to resell Pictorial's education products and to teach its courses. (Tr. at 29-30.) Petitioner's Exhibit 6 is a 1994 letter from Pictorial to the South Carolina Department of Insurance explaining that Pictorial had authorized Moore to teach its courses. (Pet'r Ex. 6.)

BISYS Education Services acquired Pictorial in 2000. (Tr. at 158.) Moore introduced a document that he contended was a contract with BISYS. (Pet'r Ex. 4.) That document is signed by Moore, but bears no other signature; the space for the signature of

BISYS's representative is blank. In any event, it is undisputed that the contract, if in fact it is one, is a "limited distributor" agreement. The document itself, and the explanation of BISYS's representative, Gregory Brumbaloe,² establish that the agreement would have authorized Moore to resell BISYS's products, but it would not have authorized him to instruct, sponsor, or proctor BISYS's CE courses. (Tr. at 155.) Such authorization would have required a separate, "provider" agreement between BISYS and Moore, which Moore could not produce and which Brumbaloe testified never existed. (Tr. at 155.) Moore produced no evidence that BISYS had authorized him to instruct CE courses using BISYS's material. (Tr. at 53.)

In December of 2001, Moore conducted a BISYS CE course entitled "Principles of Asset Management." (Tr. at 98.) Moore represented that the course would qualify students for twenty-four hours of CE credit. (Tr. at 100.) Sometime after sending the "Principles of Asset Management" materials to the students who were to take the course, Moore wrote a letter stating that the number of credit hours for the course had changed. (Tr. at 62, Resp't Ex. 5.) This letter asked the students to sign, but not date, an affidavit. (Resp't Ex. 5.)

One of the insurance producers who took the "Principles of Asset Management" course, Frank Altier, testified that, although he took the examination for "Principles of Asset Management," Moore sent him a certificate for completion of a course entitled "Annuities for Today's Investor." (Tr. at 103.) Neither Altier nor Paul Povey, another producer who took the "Principles of Asset Management" course, ever took the "Annuities for Today's Investor" course. (Tr. at 104, 186.) Moore, however, submitted

² Kaplan Financial acquired BISYS in April, 2005. Mr. Brumbaloe now works for Kaplan, but previously worked for BISYS. (Tr. at 151-52.)

an attendance roster to the Department of Insurance showing that both Altier and Povey took “Annuities for Today’s Investor.” (Resp’t Ex. 3.)

Altier apparently brought this situation to the attention of the Department of Insurance. In response to a query from the department, Moore explained that, after learning that “Principles of Asset Management” had been reduced from twenty-four to six credits, he had administered the examination for “Annuities for Today’s Investor” so that the students would receive twenty-four credits. (Resp’t Ex. 2.) He explained that he believed that he was authorized to conduct instruction in one course and give the examination for another course, because his job is to grade the examination and certify to the Department of Insurance that the students had passed it. (Tr. at 71.) Altier testified and Povey implied that they never took the examination for “Annuities for Today’s Investor.” (Tr. at 103, 186.)

CE courses require the approval of the South Carolina Department of Insurance. (Tr. at 152.) Once approved, the department assigns a course number to the sponsor of the course; a course and course number are assigned only to one particular sponsor. (Tr. at 116, 120.) The department also assigns numbers to sponsors. (Tr. at 110.) Only a sponsor approved by the Department of Insurance to conduct a particular course is authorized to conduct that course. (Tr. at 116.) Moore was approved as a sponsor by the Department of Insurance and was assigned a sponsor number.

The attendance roster Moore submitted to the department for “Annuities for Today’s Investors” and “Principles of Asset Management” contained the BISYS course number, but the sponsor number on the roster was Moore’s, not BISYS’s. (Tr. at 52.) Only BISYS, however, could use its course number; had Moore been approved to

sponsor or conduct the BISYS course, the department would have assigned *Moore* a course number different from the one it had assigned BISYS. (Tr. at 122.) Only the sponsor may apply to the Department of Insurance for approval of individual instructors to teach its courses. (Tr. at 116.)

On April 22, 2002, BISYS wrote a letter to Moore stating that BISYS does not grant authority to providers or sponsors to use its course numbers, and instructing Moore to “immediately cease the use of any BISYS Education Services South Carolina Insurance Department assigned course approval numbers.” (Resp’t Ex. 1.)

On August 8, 2002, James Byrd, senior advisor to the Director of Insurance, wrote to Moore. In his letter, Mr. Byrd informed Moore that the department needed evidence to substantiate Moore’s claims that he was authorized to teach BISYS courses. Byrd wrote, “I look forward to receiving your response to this Department within 30 days of notification” (Resp’t Ex. 7.) Moore did not respond, explaining that he was waiting for “notification.” (Tr. at 78.)

On January 30, 2003, Mary Ann O’Brien, the continuing education coordinator for the Department of Insurance, wrote to Moore, telling him that the department had no record of any approved sponsor authorizing him to act as an instructor for approved CE courses, nor did it have a record of his submission of courses for approval. Accordingly, Ms. O’Brien directed Moore to “cease and desist immediately from sponsoring, instructing and proctoring continuing insurance education and prelicensing insurance education courses in South Carolina.” (Resp’t Ex. 1.) After writing this letter, the department received complaints that Moore was continuing to transact business as a CE sponsor. (Pet’r Ex. 2, 3.) Moore then apparently submitted an application for approval to

sponsor and proctor CE courses, which the department denied on December 23, 2003, due to his previous violations of South Carolina law and his failure to disclose on his application that the department had removed his authority to conduct CE courses. (Pet'r Ex. 3.)

In addition to the facts above, I find the following as facts:

1. The Department of Insurance assigns course numbers only to approved sponsors.
2. BISYS, as an approved sponsor, submitted the courses that David Moore taught to the South Carolina Department of Insurance for approval. The department issued BISYS approved course numbers. Moore did not submit the courses for approval to the department, nor did the department issue approved course numbers to Moore for the courses he taught and proctored.
3. Moore acted as a sponsor and proctor for BISYS courses in 2001.
4. Moore had no "provider" contract with BISYS allowing him to instruct, sponsor, or proctor BISYS courses. At most, Moore had a "reseller" contract with BISYS, but, even assuming, without deciding, that such a contract was in effect, a reseller contract would not permit Moore to act as a sponsor, instructor, or proctor for approved BISYS CE courses.
5. Although Moore may have been approved to instruct Pictorial courses at some point, BISYS never sought approval from the South Carolina Department of Insurance for Moore to instruct its courses. If Moore was once approved to instruct Pictorial courses, that approval had lapsed by December of 2001 at the latest.

6. Although he was approved by the Department of Insurance as a sponsor, instructor, and proctor, that departmental approval did not authorize David Moore to sponsor, instruct, or proctor BISYS courses. I find that he was not authorized to sponsor, instruct, or proctor BISYS courses in December of 2001. Moore's claim that he failed to respond to Mr. Byrd's letter because he was waiting for "notification" is not credible. Moore knew that the department believed he was violating its regulation. If he had had evidence that he was not, then he would have submitted it. Instead, he applied later for authorization to act as a sponsor and proctor. By not contesting the department's directive to cease and desist acting as a sponsor, instructor, or proctor, and then by subsequently submitting an application for approval as a sponsor and proctor, Moore implicitly admits that he was not authorized so to act. Further, he knew that BISYS believed that he was not authorized to instruct BISYS courses, and he provided no evidence to the contrary.

7. David Moore continued to act as a sponsor, instructor, and/or proctor without authorization even after the Department of Insurance directed him to cease doing so.

8. David Moore falsified documents submitted to the Department of Insurance when he submitted a class roster showing that students should receive credit for the "Annuities for Today's Investor" course without having taken the course or the examination. Moore knew or should have known that submitting that class roster was improper. I find his testimony to the contrary not credible.

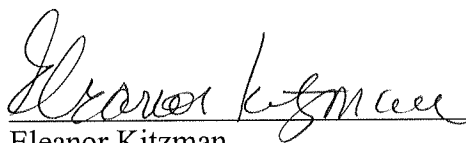
CONCLUSIONS OF LAW

1. Regulation 69-50 defines “approved sponsor” as “a responsible organization which demonstrates it is capable of offering, conducting, and maintaining quality controls of courses. Approved sponsors may include licensed insurance companies, producer associations, insurance trade associations, private organizations, and institutions of higher learning. A sponsor must be approved by the Department.”
2. Regulation 69-50, Section IV, requires approved sponsors to submit CE courses to the Department of Insurance for approval.
3. Regulation 69-50, Sections V and VI, require that instructors and proctors be approved by the Department of Insurance only upon application by an approved sponsor, and that such approval is valid only for three years.
4. David Moore violated Regulation 69-50 because he conducted a BISYS course without having been approved as a sponsor, instructor, or proctor for that course by the South Carolina Department of Insurance.
5. The Department’s denial of Moore’s application was justified based on his acting as an sponsor, instructor, and/or proctor without authorization, on his failure to disclose material facts on his application, and on his falsification of documents.
6. Because the petitioner’s attorney failed to submit a post-hearing brief, I am at somewhat of a loss to ascertain the petitioner’s legal arguments. At the hearing, however, the petitioner argued that he was denied due process because he was not afforded an opportunity to be heard. This argument is without merit. The Administrative Law Court reached this conclusion, and it remanded this matter so that Mr. Moore *could* be heard. He has now had his opportunity for a hearing. That he did not receive that

opportunity at the commencement of the case is irrelevant. The hearing conducted before the hearing officer satisfies the requirements of due process. *See Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (S.C. 1991) (remanding case to administrative agency for hearing when aggrieved party was entitled to notice and opportunity to be heard).

Accordingly, the decision of the Department of Insurance to deny authority to David Moore to sponsor, instruct, and/or proctor insurance continuing education courses is affirmed.

IT IS SO ORDERED.


Eleanor Kitzman
Director of Insurance

March 24, 2006

**Before the State of South Carolina
Department of Insurance**

David Moore

Petitioner

vs.

SC Department of Insurance,

Respondent.

SCDOI Docket Number 2005-01

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he has served the foregoing Order in the above-captioned action upon all parties to that cause by depositing a photocopy in the United States mail, first class postage prepaid and affixed, addressed to:

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